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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,401	07/11/2003	Charles F. Fritter	430.180	5520

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THE CLOROX COMPANY
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EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/618,401

Applicant(s)

FRITTER ET AL.

Examiner

Kimberly S. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 186,189-192,195 and 197-208 is/are pending in the application.
- 4a) Of the above claim(s) 206-208 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 186,189-192,195 and 197-205 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/15/06, 04/25/06, 3/21/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 6/23/06 have been fully considered but they are not persuasive. With respect to the Applicant's arguments regarding the Peleties reference disclosing a mixture of bentonite clay and expanded perlite and not a litter composition comprising an agglomerated mixture of bentonite clay and expanded perlite, this is respectfully disagreed with. Reference is drawn to column 1, lines 66 – column 2, lines 1-12, it is clearly shown that the litter composition is an agglomerated particle composed of bentonite clay and expanded perlite and not a mere mixture of the two separate constituents to form litter.
2. With respect to the arguments regarding the Peleties reference not disclosing a bulk density less than 1.5 g/cc and more particularly a bulk density between 0.25-0.85 g/cc. The Applicant has stated that the Peleties reference discloses a bulk density between 0.65-0.96 g/cc and as such, the Peleties reference anticipates the claim as the bulk density is clearly less than 1.5 g/cc and overlaps the claimed range of 0.25-0.85 g/cc. Reference MPEP 2131.03 discussing the anticipation of a claim limitation when the claimed ranges overlap.
3. With respect to the Applicant's arguments regarding the Preti et al reference stating that the use of PAC without a cross-adapting agent did not work sufficiently, this is not found persuasive. As is clearly stated at paragraph [0013], Preti states "PAC can provide considerable odor reduction of swine slurry *when used alone* or in combination with other agents". As such, Preti clearly teaches that the use of PAC is well known in the treatment of animal waste for reducing malodor.

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4. With respect to the double patenting rejection over application 10/861,044; the amendment to the claims has obviated this double patenting rejection. However, the Amendment to the claims has introduced a double patenting rejection over application 11/119204 as detailed below.

Election/Restrictions

5. Newly submitted claims 206-208 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims as originally presented are directed to a product whereas claims 206-208 are directed to it's process of manufacture

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 206-208 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Specification

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification does not positively state that the composite particles have a dusting attrition value of at most about 15%.

Claim Objections

7. Claim 202 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 202 depends from claim 201. As claim 201 requires the particle being capable of absorbing water equaling about 90% of it's weight, the dependent claim requiring the particle absorbing 75 percent of water weight does not further limit as if a particle is capable of absorbing 90% of it's weight in water, it is inherently capable of absorbing water weight inclusive of 75%.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claim 195, 199 and 200 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 195, the claim includes the limitation wherein the bulk density is less than 0.5 g/cc. While the specification provides basis for a bulk density between 0.25 and .5g/cc, the specification does not provide a basis for a bulk density having a value of less than 0.25 g/cc and as such, the claim limitation is inclusive of new matter. Regarding claim

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199, the specification does not provide basis for the moisture content of less than about 10% by weight. While the specification does disclose a moisture content of less than 15% and also moisture content between 8-13%, the specification is silent to any criticality of the moisture content being in the range of less than 10% and as such, constitutes new matter. Regarding claim 200, the specification provides support for the conductivity value of .25 cm/s or less. However, the specification does not provide support for a conductivity value of *about* .25 cm/s which would be inclusive of values greater than the 0.25 cm/s as disclosed in the specification. As such, the use of the terminology *about* is inclusive of new matter as the specification is silent to any conductivity greater than 0.25 cm/s.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 186, 189-192, 195, 197-205 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. Regarding claim 186, it is unclear as to what the Applicant is claiming. The claim is directed to a mixture of bentonite, expanded perlite and activated carbon formed into a plurality of *homogenously* agglomerated composite particles. However, the claim then states that *substantially* each particle contains a percentage of the bentonite, expanded perlite and activated carbon. As the particles are to be homogenously formed, it is unclear how only *substantially* each particle is containing all three components, i.e. if the particles are a homogenous material formed by the three sub-components, each of those components should be equally dispersed within the particle.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 186, 189-192, 195, 197-205 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peleties, US Patent 5,638,770 in view of Preti et al., US Patent Application Publication US 2002/0046710 (Preti).

Peleties discloses a composite particle comprising a mixture of bentonite and expanded perlite formed into a plurality of homogenously agglomerated composite particles (reference column 2, lines 36-40) wherein each particle inherently contains a percentage of bentonite and a percentage of expanded perlite. Peleties further discloses the particle comprising at least one performance-enhancing active. However, Peleties does not positively disclose the performance-enhancing active. Preti teaches within the same field of endeavor the use of powdered activated carbon, present in about 5 weight percent or less, for the purpose of inhibiting odor of litter matter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the powdered activated carbon as taught by Preti as the at least one performance-enhancing active of Peleties in order to help reduce the animal waste malodor. With respect to the clump strength, as the Peleties reference as modified by Preti is inclusive of the structural composition of the claimed elements, it is inherent that the particle as taught would have a clump strength greater than 90%.

Regarding claims 191 and 192, Peleties as modified discloses the particles size range to be from 100 μ m to 10mm and from 400-1650 μ m (column 2, lines 49-51).

Regarding claim 195, Peleties as modified discloses the invention substantially as claimed but does not disclose the bulk density being less than 0.5g/cc. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a bulk density of less than 0.5 g/cc, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). It is noted that the Applicant has not provided any criticality for the range of less than 0.5g/cc.

Regarding claim 197, Peleties as modified discloses the use of a fragrance (as it is stated at column 1, line 63 that the litter material may include one *or more* of perfumes, deodorants, odor absorbents (i.e. activated charcoal), etc.).

Regarding claims 198 and 199, Peleties as modified discloses the composite particle has a moisture content of less than about 15% and less than about 10% by weight (column 2, line 10).

Regarding claims 200-205, Peleties as modified discloses the structural components of the particle, i.e. the expanded perlite, bentonite and powder activated carbon, as such it is inherent that particles containing the same structural components as those as claimed in claim 186 are inclusive of the same resultant effects as claimed despite not being positively recited in the prior art of record.

Double Patenting

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

16. Claims 186, 189-192, 195, 197-205 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2 and 3 of copending Application No. 11/119204. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 2 and 3 of the conflicting patent include the structural components of the particle as currently claimed, i.e. bentonite, expanded perlite and activated carbon. As the structure of the particle is claimed in the conflicting application, the resultant variables including dusting and conductivity would be obvious and/or inherent in the production thereof.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kimberly S Smith
Examiner
Art Unit 3644

kss